

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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KENNETH J. WARD, JR.,

Plaintiff,

-against-

NOT FOR PUBLICATION  
**MEMORANDUM & ORDER**  
15-CV-4175 (CBA) (ST)

CITY OF NEW YORK, et al.,

Defendants.

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**AMON, United States District Judge:**

On July 15, 2015, Plaintiff Kenneth Ward filed this action pro se against the City of New York and numerous municipal employees seeking injunctive and declaratory relief and monetary damages under 42 U.S.C. § 1983 for alleged false arrest and malicious prosecution stemming from his arrest on April 16, 2014. (ECF Docket Entry (“D.E.”) # 1.)

On September 7, 2018, Defendant Carl Diaquoi (“Defendant”), the arresting officer, served the First Set of Interrogatories and Request for Production of Documents on Plaintiff by hand-delivery. (D.E. # 98.) Plaintiff’s responses were due by October 9, 2018. (Id.) On November 30, 2018, Magistrate Judge Steven L. Tiscione granted Defendant’s motion to compel Plaintiff’s discovery responses by December 31, 2018. (D.E. # 99.) Plaintiff failed to comply with that deadline and has since failed to comply with multiple deadline extensions, despite express warnings that his continued failure to produce the ordered discovery would result in the dismissal of his case.

In a Report and Recommendation (“R&R”) dated May 15, 2019, Magistrate Judge Tiscione recommended that the case be dismissed with prejudice for failure to prosecute and failure to comply with a court order. (D.E. # 107.) By order entered August 9, 2019 (D.E. # 108), I declined to adopt the R&R and denied Defendant’s motion to dismiss the case for failure to prosecute. In that order, however, I warned Plaintiff that “further unexcused delays will not be tolerated” and that if he “fails to comply with this deadline again, the Court will dismiss his case pursuant to Rule 41(b).” (Id. at 4.)

On May 15, 2020, Defendant moved for the third time to dismiss this action with prejudice for lack of prosecution. (D.E # 117.) I referred that motion to the Honorable Steven L. Tiscione for R&R. (Order dated 05/27/20.) Magistrate Judge Tiscione issued a thorough and well-reasoned R&R recommending that the Court grant the motion and dismiss the instant action with prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. (D.E. # 122.)

No party has objected to the R&R, and the time for doing so has passed. When deciding whether to adopt an R&R, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). To accept those portions of the R&R to which no timely objection has been made, “a district court need only satisfy itself that there is no clear error on the face of the record.” Jarvis v. N. Am. Globex Fund, L.P., 823 F. Supp. 2d 161, 163 (E.D.N.Y. 2011) (internal quotation marks and citation omitted).

I have reviewed the record and, finding no clear error, I adopt the R&R as the opinion of the Court. Accordingly, Defendant’s third motion to dismiss for failure to prosecute, (D.E. # 117), is granted, and the action is dismissed with prejudice.

SO ORDERED.

Dated: November 9, 2020  
Brooklyn, New York

/s/ Carol Bagley Amon  
Carol Bagley Amon  
United States District Judge